REMARKS

Claims 1-10 remain pending in this Application. In the Final Office Action, the Examiner rejected claims 1-10 under 35 U.S.C. § 102(a) as being anticipated by 'Distributed Algorithms,' by Nancy A. Lynch ("*Lynch*").

Finality of Rejection

Applicant traverses the finality of the Office Action. It is improper to make a rejection final when the Examiner introduces a new ground of rejection that is not necessitated by an applicant's amendment of the claims. (*See* M.P.E.P. § 706.07.) In this case, Applicant's Amendment dated April 25, 2005, merely amended the claims to respond to the Examiner's rejection under 35 U.S.C. § 112, second paragraph. Accordingly, the Examiner's new grounds of rejection was not necessitated by the Amendment. Applicant, therefore, submits that the finality of the rejection is premature and should be withdrawn.

Rejection Under 35 U.S.C. § 102

Applicant respectfully traverses the rejection of claims 1-10 under 35 U.S.C. § 102(a) as being anticipated by *Lynch*.[1] In order for *Lynch* to anticipate Applicant's claimed invention under Section 102(a), each and every element of the claim in issue must be found, either expressly described or under principles of inherency, in the reference. Further, "[t]he identical invention must be shown in as complete detail as is

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[1] Lynch was published in 1996, more than one year before Applicant's filing date. Accordingly, Applicant respectfully notes that 35 U.S.C. § 102(b), not § 102(a), appears to be the more pertinent statute.

contained in the . . . claim." (*See* M.P.E.P. § 2131, quoting *Richardson v. Suzuki Motor Co.*, 868 F.2d 1126, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989).)

Lynch fails to disclose each and every feature recited in claim 1. *Lynch* apparently discloses a "Ben-Or" algorithm for handling process failures in an <u>asynchronous</u> distributed computing network. (Pages 672-673.) However, *Lynch* fails to disclose, at least, "a distributed system which makes n computers, which are connected via a network, operate <u>synchronously</u>" (emphasis added) as recited in claim 1. Thus, *Lynch* fails to disclose at least this feature of claim 1.

Moreover, since *Lynch* only discloses an algorithm, *Lynch* does not describe any structure for carrying out the algorithm. Thus, *Lynch* also fails to teach the structure recited in claim 1. Namely, *Lynch* does not teach "an input candidate collection device," "a first input candidate selection control device," "a second input candidate selection control device," or "a third input candidate selection control device," as recited in claim 1.

Further, in connection with the Ben-Or algorithm, *Lynch* teaches a process *Pi* that apparently considers the parameter *v* and, if *Pi* obtains (n - f) messages having the same value of *v*, *Pi* performs the function *decide(v)*. (Page 673, lines 24-30.) However, nothing in *Lynch* suggests that the function *decide(v)* corresponds to the claimed settling "that input data as the next to be processed," as recited in claim 1. Accordingly, *Lynch* fails to disclose the claimed "first input candidate selection control device configured to...settle, when the not less than (n - f) input data include not less than (n - f) input data having identical contents, that input data as the next to be processed."

In addition, claim 1 recites "a second input candidate selection control device configured...to cause the input candidate collection device to <u>reexecute collection</u> after selecting the input data item as a self candidate and <u>discard all input data</u> items of other candidates, when the majority of collected input data items are present" (emphasis added). *Lynch's* disclosure of the Ben-Or algorithm is silent as to the claimed functions: "reexecute collection" and "discard all input data." Accordingly, *Lynch* also fails to disclose the "a second input candidate selection control device," recited in claim 1.

Claim 1 further recites, "<u>a third input candidate selection control device</u> configured to cause the input candidate collection device to reexecute collection after arbitrarily selecting input data item from the collected input data items as a self candidate and discarding all input data items of other candidates, when the second input candidate selection control device determines that the majority of the collected input data items are not present" (emphasis added). *Lynch's* disclosure of the Ben-Or algorithm apparently consists of only two rounds ("Round 1" and "Round 2", page 673, lines 21-22). No third round is disclosed. Therefore, even if these two rounds could somehow teach the claimed first and second input candidate selection control devices (and Applicant does not agree that they do), *Lynch* certainly fails to teach a third input candidate selection control device, as further recited in claim 1.

In light of the above-described deficiencies of *Lynch*, Applicant submits that claim 1 is allowable over the applied reference and claims 2-5 are allowable at least due to their dependence from claim 1.

Claim 6, although of different scope, recites features similar those of claim 1. Therefore, *Lynch* does not anticipate claim 6 under 35 U.S.C. § 102(a) for similar reasons as discussed above for claim 1. Further, claims 7-10 are not anticipated by *Lynch* at least due to their dependence from claim 6.

Accordingly, for at least the reasons discussed above, Applicant respectfully request that the Examiner withdraw the rejection of claims 1-10 under 35 U.S.C. §102(a) and allow the claims.

Conclusion

In view of the foregoing, pending claims 1-10 are in condition for allowance, and Applicants requests a favorable action.
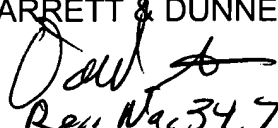
Applicant encourages the Examiner to contact the undersigned representative by telephone to discuss any remaining issues or to resolve any misunderstandings.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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GARRETT & DUNNER, L.L.P.

Dated: November 15, 2005   By:_____
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